

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LA UNIÓN DEL PUEBLO ENTERO, *et al.*,

§

Plaintiffs,

§

V.

§

STATE OF TEXAS, *et al.*,

§

Case No. 5:21-cv-00844-XR
[Lead Case]

Defendants.

§

HARRIS COUNTY REPUBLICAN PARTY, *et
al.*,

§

Intervenor-Defendants.

§

**THE PARTIES' JOINT ADVISORY REGARDING
CLAIMS TO BE HEARD DURING FIRST PHASE OF TRIAL**

NOW COME the undersigned parties in this case and file this Joint Advisory Regarding Claims to be Heard During First Phase of Trial and to inform the Court of any additional areas of disagreement with respect to the schedule and trial.

1. The parties agree that fact and expert discovery are closed, with the exception of discovery as outlined in (a), (b), and (c) below, except that any outstanding responses to previously served discovery requests shall still be produced in compliance with the Federal Rules of Civil Procedure. All rights and remedies under the Federal Rules of Civil Procedure, including motions to compel discovery, are still available.

a. The parties agree that Dr. Smith may produce a supplemental Rule 26(a) report after the close of expert discovery analyzing newly produced data but disagree on a date.

Due to Dr. Smith's end-of-semester commitments, the HAUL Plaintiffs propose that

the deadline for Dr. Smith to produce a Rule 26(e) report be June 15, 2023. Conversely, State Defendants and Intervenor-Defendants propose that the deadline be June 5, 2023. The parties further agree that Defendants may produce a rebuttal report to Dr. Smith's supplemental report and may depose Dr. Smith regarding his supplemental report after the close of expert discovery.

- b. The Parties agree that Defendants may depose Tania Chavez and Stella Guerrero Mata after the close of discovery.
 - c. The Parties agree that there may be additional discovery related to the claims set forth in Paragraph 4 below if it is allowed as a result of any further proceedings in *LULAC Texas v. Hughes*, No. 22-50435 (5th Cir.), or *LUPE v. Bettencourt*, No. 23-50201 (5th Cir.). That discovery would be limited to the documents that are the subject of those appeals and any deposition or live witness testimony related to the subject matter of those documents as ordered by the court or agreed to by the parties following the resolution of those proceedings.
2. Consistent with the Proposed Second Amended Scheduling Order, Dkt. No. 579, the parties recommend that the Court maintain all pretrial deadlines for claims proceeding to trial on September 11, 2023, as follows:
 - a. The deadline for filing Rule 26(a)(3) disclosures is July 25, 2023, excluding pretrial findings of fact and conclusions of law, as ordered by the Court during the May 16, 2023, status conference (Tr. 31:12-13).
 - b. The deadline for filing objections under Rule 26(a)(3) is August 8, 2023. Any objections not made will be deemed waived.
 - c. The deadline to file a Final Joint Pretrial Order and any motion *in limine* is August 22, 2023.

- d. The Final Pretrial Conference shall be held on Thursday, August 31, 2023, at 10:30 a.m.
 - e. The first phase of the trial starts September 11, 2023. Trial will be in recess on the following dates: September 15, 18, and 25-29.
3. In accordance with the Court's request, the parties propose that the following claims be heard during the first phase of trial at which point the parties will rest and the trial record would be closed as to these claims:
- a. Claims under Section 101 of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B);
 - b. Claims that SB1 violates the First and Fourteenth Amendments of the U.S. Constitution (undue burden);
 - c. Claims of racially discriminatory results under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, et seq.;
 - d. Claims that SB1 is unconstitutionally vague in violation of the First and Fourteenth Amendments;
 - e. Claims that SB1 unconstitutionally restricts free speech and expression in violation of the First and Fourteenth Amendments;
 - f. Claims that SB1 is in violation of Section 208 of the Voting Rights Act, 52 U.S.C. § 10508;
 - g. Claims that SB1 violates Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131; and
 - h. Claims that SB1 violates Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.
4. In accordance with the Court's request, parties propose that the following claims be heard during the second phase of trial:

- a. Claims that SB1 violates the Fourteenth and Fifteenth Amendments of the U.S. Constitution (intentional racial discrimination); and
 - b. Claims of racially discriminatory intent under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, et seq.
5. In light of the opinion issued by the Fifth Circuit on May 17, 2023 in *LULAC Texas v. Hughes*, No. 22-50435, the HAUL, MFV, and LULAC Plaintiffs are prepared to proceed with trial on September 11, 2023 on all claims brought in their respective complaints, HAUL and MFV Plaintiffs' Second Amended Complaint [Dkt. 199] and LULAC Plaintiffs' Second Amended Complaint [Dkt. 207], so long as the trial record remains open as to intentional discrimination claims under the 14th Amendment, 15th Amendment, and Section 2 of the Voting Rights Act for an opportunity for the parties to introduce additional evidence after the resolution of *LUPE v. Bettencourt*, No. 23-50201 (5th Cir). Under this proposal, at the conclusion of the September 11 trial, the parties will rest as to all other claims, and the trial record would be closed as to those claims. Additional evidence that may be introduced in support of the claims outlined in Paragraph 4 after the resolution of the *Bettencourt* appeal would be limited to the documents that are the subject of that appeal and any deposition or live witness testimony related to the subject matter of those documents as ordered by the court or agreed to by the parties following the resolution of the *Bettencourt* appeal. Alternatively, should the Court prefer to defer trial on intent claims to a second phase of trial, the HAUL and MFV Plaintiffs agree with the division of claims between the first and second phase of trial outlined in paragraphs 3 and 4 above.

Dated: May 26, 2023

Respectfully Submitted,

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The undersigned counsel hereby certifies that he has electronically submitted a true and correct copy of the above and foregoing via the Court's electronic filing system on the 26th day of May 2023.

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